

19 MAY 1976

MEMORANDUM FOR: General Counsel

FROM : Robert W. Gambino  
Director of Security

SUBJECT : Proposed Revision of EO 10450

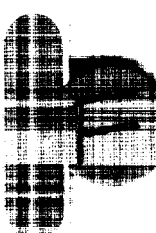
1. This Office recently furnished your Office with a recent draft revision of EO 10450, which was prepared by a subcommittee of "Project 10" (an organization which had its origin in the Domestic Council in early 1975 and whose membership today consists of a representative of the Domestic Council Committee on the Right of Privacy and nine (9) other agencies and departments).

2. At that time, [redacted] of your Office was also verbally advised of the limited, informal involvement of this Office in the revision of EO 10450.

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3. The draft revision in question is the sixth (6th) considered by the committee. While we understand that there is still a lack of consensus among the committee, we also understand that it is the desire of the Domestic Council Committee on the Right of Privacy to refer the matter to the Office of Management and Budget for formal coordination with the various departments and agencies of the Executive Branch.

4. We understand that the Civil Service Commission has reservations concerning the inclusion and use of the last draft of procedures relating to the termination of employees based on the Act of 26 August 1950 (5 U.S.C. 1970 ed. 7501 et seq.). We are unable to predict at this time if another draft will be submitted by the Project 10 Committee. In any event, based on our review of the last three drafts, it appears that the final draft will contain several items that are of concern to this Office.



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5. Before setting out these specific items, I would like to invite your attention to the exemption for the Agency as set forth in Section 3(b) of the last draft which was forwarded to your Office. It would appear that the committee intends that this exemption be limited to our Investigation and Security Adjudication Program only. This exemption first appeared in the fifth (5th) draft in somewhat broader language which excluded the CIA's personnel security suitability and adjudication program from Civil Service Commission "regulations, guidelines, and oversight, and from the provisions of this Order which conflict with procedures or requirements of a program operating under statutes or other Executive Order."

6. We realize that some, if not all, of the following items that may appear to be beyond the scope of the CIA exemption as it appears in the last draft may nevertheless still not be binding upon the Agency, because they may be inconsistent with the Director's statutory authority or that conferred upon him by Executive Order 11905. Your opinion and assistance is solicited in this matter in order that we can avoid future problems and/or potential embarrassment for the Agency.

7. Section 6(c) of the draft would give the DCI the authority to designate "Positions of Special Trust." As you are aware, the former DCI, by memorandum dated 29 May 1953 to the Chairman of the Civil Service Commission, designated all "regular positions in the Central Intelligence Agency" as sensitive positions within the meaning of EO 10450. It is believed that all staff positions of the Agency would have to be designated and certified as "Positions of Special Trust." In this connection, it is noted that Section 6(c) (2)(ii) requires an annual certification of the validity of the designation of such positions to the Civil Service Commission.

8. Section 7(f)(2) of the draft requires written notice to the individual prior to the initiation of any investigation. Compliance with this section would not be possible in most of our covert investigations and would create serious cover problems in others because of the cover mechanisms utilized by this Office in the conduct of investigations. This requirement probably falls within the exclusion referred to above, if not, it is believed that we would be exempted from same by virtue of it being inconsistent with the language of Section 4(b)(8) of EO 11905. It is acknowledged that privacy matters contained in Section 7(f)(2) should properly be included in a statement furnished to all staff applicants.

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9. Similar to the above, Section 8(e) requires that "the individual shall be informed of the completion of any investigation conducted pursuant to this Order and shall be informed of the final suitability determination." We believe that we would be exempt from the above based on the reasoning as set forth in the above paragraph.

10. We do not believe that we could comply with the language in Section 9(b) for cover and security reasons. Prior to our receipt of the last draft, we were advised by a representative of the Civil Service Commission that such requirement was intended to apply to the "competitive service" only, and that CIA would therefore be exempted. It is noted, however, that the language in the last draft has been changed to include both the "competitive or excepted service." I believe that it is absolutely essential that action be taken to ensure that we are exempted from compliance with this section, unless your Office is certain that we are already exempted therefrom.

11. As indicated above, we understand that the Civil Service Commission's principal objection to this latest draft involves the language in Section 10, which is based on the Act of 26 August 1950. In this connection, your attention is invited to the applicable provisions of

25X1A [ ] It is believed that we would be exempt from the procedural requirements of Section 10(a) and Section 10(b) including affording the subject of an adverse action an opportunity to be represented by counsel and the opportunity of cross-examination, as a result of the DCI's authority under Section 102(c) of the National Security Act of 1947. Nevertheless, in view of the current emphasis on due process, if and when EO 10450 is revised, it is believed that [ ] will also have to be revised.

25X1A 12. Section 13(d)(i) would continue the EO 10450 requirement that each agency furnish the Civil Service Commission with the names of all persons who were investigated, and the names of each person whose employment was suspended or terminated. As you are aware, we were exempted from both requirements by agreement with the Civil Service Commission. It is believed that action should be taken to continue such exemption prior to the promulgation of the new Executive Order.

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13. For your information, there are other areas including the scope of investigation, etc., which do not meet our current investigative standards. We believe that we would be exempt from same based on the language in Section 3(b) and Section 4(b)(3) of EO 11905. Nevertheless, we would be affected by same inasmuch as we may not be able to accept clearances based on such investigations for access to our compartmented clearance information or for liaison approval purposes without conducting further investigation. As a practical matter, we realize that it is probably impossible to reverse this trend which was started several years ago by the Civil Service Commission. We, of course, will continue to monitor this development and adjust our procedures accordingly.

14. Your expeditious attention to this matter will be appreciated.


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Robert W. Gambino

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19 July 1976

MEMORANDUM FOR: General Counsel

ATTENTION :

FROM : Robert W. Gambino  
Director of Security

VIA : Deputy Director for Administration

SUBJECT : Proposed Revision of EO 10450

1. Reference is made to my memorandum of 19 May 1976 and to the proposed draft revision of EO 10450 dated 24 June 1976, which was recently forwarded to this office by Mr.

2. The draft of 24 June 1976 contains all of the objectionable provisions that are set forth in my memorandum of 19 May 1976, which was sent to the General Counsel. However, in addition thereto, the draft contains several changes which would impact heavily upon the Agency and the entire Government. The current draft now requires a full field investigation "with particular emphasis on the most recent five (5) year period." Coverage for references and employment have been reduced from ten (10) years to the last five (5) years. Neighborhood coverage has been reduced to the last three (3) years. The investigative coverage is thereby reduced to the scope that the Civil Service Commission has been following since 1968 and to the reduced scope just implemented by DOD. There is a provision in the language which indicates that special coverage may be requested by the head of a department or agency and will be authorized as approved by the Civil Service Commission. Other than the foregoing, there

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is no language that would authorize a more extensive scope to meet DCID 1/14 requirements or for Special Background Investigations for access to DOD sensitive information like

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3. In addition to the foregoing, the new draft provides that any investigation completed with favorable results, which has been conducted in accordance with the foregoing scope, shall be accepted as meeting investigative requirements for any position of trust even though a more extensive scope had been authorized for such position by the Civil Service Commission, provided that the individual concerned has been continuously employed in any Position of Special Trust for five (5) years or more.

4. A change was also made in the requirements in field coverage in the reinvestigation program. It is believed that the new language has the effect and will be interpreted as removing the discretionary requirement for a field investigation every five (5) years, where there is an absence of "potentially disqualifying suitability information." In such cases, the maximum reinvestigation would consist of obtaining an updated PHS and a limited National Agency Check.

5. In addition to the problems outlined above, and in my referenced memorandum that may or may not be included in the exemption provided for the Agency as set forth in Section 3(b), the new draft has created another problem for the Agency in that this Office will not be able to accept security clearance certifications from other government agencies for access to Agency information based on the proposed reduced security standards. We are now able to grant reciprocity in most cases to other agencies based on the fact that their investigations and clearances have been based on the same standard utilized by the Agency. This will no longer be the case if this draft is accepted. The resultant delays and costs both in terms of manpower and money would be unacceptable.

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6. I, therefore, believe that it is absolutely imperative that the Office of General Counsel proceed with plans to have the DCI intercede in this matter because of the serious consequences that would result from the lowering of the proposed investigative standards throughout the government.

7. In conclusion, I still feel that the exemption granted to this Agency, as written, may include many of the matters that we now find objectionable. Nevertheless, I feel that we should not assume the risk of a contrary interpretation, and therefore, that we should also attempt to obtain a complete and express exemption for the Agency covering those matters as cited in my earlier memorandum.

Robert W. Gambino

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